



Comptroller General
of the United States

256211

Washington, D.C. 20548

Decision

Matter of: Information Systems Networks, Inc.

File: B-254384.3

Date: January 21, 1994

David V. Anthony, Esq., Joseph K. Wiener, Esq., and Richard J. Vacura, Esq., Pettit & Martin, for the protester. Rand L. Allen, Esq., Paul F. Khoury, Esq., and Scott A. Coffina, Esq., Wiley, Rein & Fielding, for EG&G Special Projects, Inc., an interested party. Brian L. Kessler, Esq., Alan F. Lehman, Esq., and Joseph M. Goldstein, Esq., Department of the Air Force, for the agency. Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly applied an unstated evaluation criterion and misevaluated protester's proposal is denied where record shows that allegedly unstated criterion was reasonably encompassed by the stated criteria, and the agency's evaluation of protester's proposal, while containing one minor error, was reasonable.
2. Protest that agency improperly included certain contract line items (CLINs) in cost evaluation is denied where record shows that agency at all times intended to evaluate all CLINs, but inadvertently failed to amend one section of solicitation; in any event, agency included the CLINs in its evaluation of all offerors, and protester therefore suffered no prejudice.
3. Agency properly made award to higher priced, technically superior offeror where solicitation provided that technical considerations were more important than cost, and awardee's proposal reasonably was found technically superior to all other proposals.

DECISION

Information Systems Networks, Inc. (ISN) protests the award of a contract to EG&G Special Projects, Inc. under request for proposals (RFP) No. F19628-92-R-0072, issued by the Department of the Air Force to acquire ground to air

communications equipment for the Egyptian Air Force. ISN argues that the agency improperly evaluated proposals, failed to conduct proper discussions and made an unreasonable cost/technical tradeoff in awarding the contract to EG&G.

We deny the protest in part and dismiss it in part.

The solicitation called for offers to fabricate, install and test a base quantity of five plus an optional quantity of two ground air transmit receive (GATR) centers for the Egyptian Air Force, and to provide associated technical data and support maintenance services. Each GATR center is comprised of two identical shelters containing a variety of data transmission and recording equipment, remote radio access and control equipment, and associated hardware such as antennas, environmental control units and generators. The centers are designed to provide enhanced communications capabilities between Egyptian ground based command units and aircraft, and are being furnished under a foreign military sale program.

The RFP provided that award would be made to the firm submitting the proposal representing the best overall value to the government. Proposals were to be evaluated under both technical and cost criteria, with technical considerations being more important than cost. Technical proposals were to be evaluated using three criteria: Management, System Design, and Supportability/Training. Management and System Design were of equal weight and Supportability/Training was less important. Offerors were assigned color/adjectival ratings of either blue/exceptional, green/acceptable, yellow/marginal or red/unacceptable, and also were assigned risk ratings of either high, medium, or low for each of the three criteria. The agency also assigned a cumulative adjectival/color and risk rating based on its assessment of each firm's overall technical quality.

For cost evaluation purposes, the RFP provided that the agency would add all of the firm, fixed-price items to all time and materials cost estimates to arrive at a total estimated cost for each firm.¹ The RFP also provided that the agency would assess the proposals for cost realism to ensure that the cost proposals were consistent and reflected an understanding of the RFP and a sound approach to satisfying the requirement. In addition, the solicitation provided for a 10-percent evaluation preference for small

¹All hardware was to be furnished on a firm, fixed-price basis, while all labor and materials associated with installing and testing the GATR centers were to be furnished on a time and materials basis.

disadvantaged businesses (SDB), whereby 10 percent was added to the prices (for evaluation purposes) of all non-SDBs prior to the agency's source selection.

Seven initial proposals were received. All seven were determined to be within the competitive range, and the Air Force engaged in written and oral discussions with each offeror. After discussions, the agency solicited and received best and final offers (BAFO). ISN's BAFO received green/acceptable ratings and low risk ratings in each evaluation area, leading to an overall rating of green/acceptable/low risk. EG&G's BAFO received a green/acceptable rating for both the Management and Supportability/Training criteria, a blue/exceptional rating under the System Design criterion, and a low risk rating under all three criteria. Overall, EG&G's proposal was rated blue/exceptional/low risk.

In the cost evaluation, EG&G (a large business) was found to have an evaluated price of \$25,680,000 after application of the 10-percent SDB evaluation preference. ISN, an SDB, was found to have a total evaluated price of \$21,121,000. The Air Force selected EG&G for award, finding that the firm's technical superiority warranted payment of the associated cost premium. ISN's protest followed the Air Force's source selection.²

TECHNICAL EVALUATION OF ISN PROPOSAL

ISN argues that the Air Force improperly evaluated its technical proposal. Where a protester alleges that a technical evaluation was improper, we will consider whether the evaluation was reasonable and consistent with the RFP's evaluation scheme. JB Indus., B-251118.2, Apr. 6, 1993, 93-1 CPD ¶ 297.

ISN maintains that the Air Force miscalculated its technical proposal in two areas.³ First, ISN contends that the

²ISN filed an earlier protest alleging that the Air Force had erroneously failed to apply the SDB evaluation preference. The Air Force took corrective action based on that protest, and our Office dismissed the matter. ISN's current protest is based on the agency's revised source selection which takes into account the price difference after application of the SDB preference.

³ISN argued for the first time in its comments on the agency report that the Air Force failed to conduct meaningful discussions with it in these two technical areas. ISN also argued for the first time in its comments that the Air Force
(continued...)

agency improperly downgraded its proposal under the Management criterion for proposing a subcontractor employee as one of its key employees. According to the protester, the agency improperly downgraded it in this area because of an incorrect conclusion that the individual (the firm's logistics and training manager) was not physically located at ISN's facility. ISN maintains that, in fact, its logistics and training manager was to be located at ISN's headquarters.

The Air Force identified as a weakness under the Management criterion the firm's choice of a subcontractor employee for its training and logistics manager. While the record reflects a minor concern regarding the physical location of this individual, the evaluation materials show that the Air Force was more fundamentally concerned with the fact that the employee worked for a subcontractor rather than directly for ISN. The evaluators concluded in this regard that, "[a]lthough [the subcontractor employee] meets the literal requirements of the RFP, [this approach] could limit direct access by the government into the integrated logistic support activities." In light of this concern--which ISN has not shown was unwarranted--and the fact that the agency ultimately found ISN acceptable in this area, there is no basis to conclude that the agency's apparent misunderstanding as to the physical location of the employee affected the firm's rating.

Second, ISN maintains that the Air Force improperly downgraded its proposal under the System Design criterion for its proposed method of frequency allocation among the UHF and VHF frequency bands. (The RFP provided that the agency would evaluate the firms in this area for a variety of considerations, including the offerors' minimization of UHF and VHF frequency spacing.) According to ISN, the agency improperly downgraded its proposal in this area for offering what the agency viewed as a complex method of frequency allocation that limited user flexibility. ISN contends that user flexibility was never a stated evaluation area and that, in any event, it proposed a software system that adequately met any potential requirement for user flexibility.

³(...continued)

did not conduct meaningful discussions in one area relating to its cost proposal. These allegations are untimely, and will not be considered, because they were raised more than 10 working days after ISN received the agency's report.

4 C.F.R. § 21.2(a)(2)(1993); Ebon Research Sys., B-253833.2; B-253833.3, Nov. 3, 1993, 93-2 CPD ¶ ____.

Agencies are required by statute to inform offerors of the significant factors and subfactors for proposal evaluation, and must base their technical evaluation on the stated areas; they are not required to specifically identify all possible areas for consideration under each evaluation criterion, so long as the unidentified areas are intrinsically related to the stated evaluation factors. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16.

Although the RFP did not speak in terms of user flexibility, as noted above, the RFP specifically provided that the offerors' ability to minimize frequency spacing along the UHF and VHF bands would be considered in the evaluation, and also made clear that proposals to use less space in each band were preferable. The record shows that increasing the amount of unused space along each band in fact enhances user flexibility by enabling the user to employ different portions of the UHF or VHF bands as appropriate, given various operating environments. We think it therefore should have been apparent that the agency was interested in maximizing user flexibility, and we see nothing improper in the agency's evaluating proposed frequency assignments for user flexibility.

As for the evaluation itself, the protester's system, while meeting the requirements of the RFP was rated less desirable than EG&G's because it required use of a much greater portion of the frequency bands and correspondingly required the employment of a relatively complex frequency assignment system. EG&G's system had been found significantly superior to all other systems including ISN's because of its minimal spacing between frequencies; by virtue of this feature, there were no restrictions on the assignment of frequencies in the operating environment. It was for this reason that EG&G was rated blue/exceptional in this area, and ISN was rated only acceptable. We conclude that the agency's evaluation in this area was proper and that it reasonably rated the awardee's system superior to the protester's in this area.

ISN'S COST EVALUATION

ISN argues that the Air Force improperly added more than \$1 million dollars to its evaluated cost because of ISN's alleged failure to include the cost of certain ancillary equipment in its proposal. This allegation is without merit. The record shows that while the Air Force noted the insufficient quantities of certain equipment in ISN's offer, it did not adjust ISN's proposed cost upward for evaluation or source selection purposes. For evaluation and source

selection purposes, the agency used ISN's offered price of \$21,121,000.⁴

ISN also argues that the Air Force improperly included the estimated costs associated with three contract line items (CLINs) that were for materials needed during site preparation prior to installation of the GATR centers. According to the protester, the RFP provided that these costs would not be included in the agency's evaluation.

The record shows that during discussions, the agency changed the RFP's schedule B to add the three CLINs; this was intended to segregate the cost data for the labor-hour CLINs from cost data for the material CLINs for the time and materials portion of the contract. The same work was to be performed under both versions of schedule B, but the later version (which included separate CLINs for the materials) provided the agency with a breakdown of costs between labor and materials for this aspect of the contract. Section M (which included the basis for evaluation and award) as originally issued enumerated all of the CLINs except for the technical data package CLIN (an unpriced item), and provided that all costs would be added together by the agency to arrive at the offerors' estimated prices; section M inadvertently was not revised to include the three new CLINs.

An RFP must be read as a whole and in a reasonable manner, giving effect to all its provisions. Crown Logistics Servs., B-253740, Oct. 19, 1993, 93-2 CPD ¶ 228. Reading the RFP as a whole in this case, it was sufficiently clear that the costs of these three CLINs would be evaluated. The revised schedule B was only issued so that the agency could obtain differently structured cost data; it provided "the CLINs/SUBCLINs relating to the time and materials portion of the GATR program have been segregated into labor . . . and material. . . ." The revision did not in any way suggest that the material costs would no longer be evaluated. The RFP at all times provided for evaluation of the cost associated with performance of all work under the contract, including the work covered by the three new CLINs; while section M did not specifically state that the three new CLINs would be evaluated, nothing in the RFP suggested that they would not, and it is not apparent why any offeror would

⁴While the record shows that the agency's conclusion regarding ISN's cost proposal did not affect the firm's ultimate technical rating, the Air Force properly could have downgraded the firm during the technical evaluation, since the RFP permitted the agency to assess the potential impact of a firm's unrealistically low pricing. See Family Realty, B-247772, July 6, 1992, 92-2 CPD ¶ 6.

assume that certain of the costs that would be incurred would not be considered in the award decision.'

TECHNICAL EVALUATION OF EG&G'S PROPOSAL

ISN argues that the agency improperly assigned an overall blue/exceptional rating to EG&G's proposal.⁶ According to ISN, the Air Force could not properly have found EG&G's proposal to be blue/exceptional overall because the firm received a blue/exceptional rating under only the System Design criterion and green/acceptable ratings for the other two criteria. ISN concludes that the Air Force gave undue weight to the System Design criterion.

In conducting technical evaluations, agency evaluators have considerable discretion in assigning technical point scores or adjectival ratings; the scores assigned are useful guidelines for purposes of making source selection decisions, but cannot by themselves supply the basis and reason for a source selection decision. Met-Pro Corp., B-250706.2, Mar. 24, 1993, 93-1 CPD ¶ 263. So long as evaluation results are reasonable and consistent with the RFP's evaluation scheme, we will not object to them. JB Indus., supra.

We find the evaluation of EG&G's proposal unobjectionable. As discussed above, the evaluators considered the EG&G system design superior to all other proposed designs, and assigned it a blue/exceptional rating in this area, because of its minimization of frequency spacing along the UHF and VHF bands; EG&G also offered a unique approach to mitigating co-site interference. While EG&G received green/acceptable

⁶In any event, the Air Force included the estimated costs of the three CLINs in its cost evaluation of all offerors. Thus, all offerors were treated equally, and inclusion of the three CLINs in the evaluation did not prejudice ISN. (ISN does not allege that it suffered any prejudice.) See Frontier Eng'g, Inc., B-252408, June 24, 1993, 93-1 CPD ¶ 493 (prejudice is an essential element of every viable protest).

⁷ISN also argues that the Air Force improperly accepted EG&G's proposal even though its proposed interference cancellation system was technically noncompliant. The agency's report clearly describes the nature of EG&G's interference cancellation system. ISN thus was required to raise this issue within 10 working days after receiving the agency report. 4 C.F.R. § 21.2(a)(2). Since the protester raised the matter for the first time on November 5, 20 working days after it received the agency report, it is untimely and will be considered.

ratings in the other two areas, the record shows that the agency found specific advantages to the EG&G offer in these areas. In the Management area, the evaluators found EG&G's proposal to be particularly strong in reflecting the firm's understanding of the difficulties and risks associated with doing business in Egypt. The evaluators concluded that EG&G had demonstrated superiority over the other firms by identifying and offering methods for mitigating this (as well as other) program risks. Similarly, in the Supportability/Training area, the evaluators found that EG&G's comprehensive built-in testing (CBIT) system enabled organizational level personnel to identify failure in one or more system components without the use of test equipment. The evaluators found that EG&G's CBIT system was superior to all other approaches offered, and also found that it exceeded the RFP's requirements. These specific advantages were considered to enhance EG&G's green/acceptable ratings. We see nothing unreasonable in the agency's conclusion that two ratings at the high end of the green/acceptable category, combined with one blue/exceptional rating, warranted an overall blue/exceptional rating.

COST/TECHNICAL TRADEOFF

As already noted, ISN filed an earlier protest with our Office contending that the Air Force improperly failed to apply the RFP's SDB preference. That protest was filed after the agency's initial decision (dated July 30) selecting EG&G for award. In response to that protest, the Air Force applied the SDB preference and made a new source selection decision; it again concluded that EG&G's proposal represented the best overall value to the government. The agency's second source selection decision is embodied in a document dated August 30. When this second source selection decision document was generated, the Air Force destroyed the July 30 document.

ISN argues that the Air Force could not reasonably have selected EG&G in light of the additional cost difference between EG&G and ISN after application of the SDB preference; that the agency's second source selection decision contains no analysis of the added cost differential resulting from application of the SDB preference, and was merely a rubber stamping of the earlier decision; and that the agency improperly destroyed the first source selection decision document so that there would be no way to compare the two decisions.

The tradeoff decision was unobjectionable. First, the Air Force's failure to retain the initial source selection decision document does not render the source selection improper. Rather, the only relevant consideration is whether the second source selection decision (involving the

payment of an evaluated cost premium of approximately \$4 million) is adequately supported by the record. See generally Bank St. College of Educ., 63 Comp. Gen. 393 (1984), 84-1 CPD ¶ 607. We conclude that it is.

The RFP provided that technical considerations were more important than price, and the agency found the EG&G proposal superior to all other proposals based on a number of significant technical considerations. As already discussed in detail above, the agency found that the EG&G proposal was technically superior because of its management approach, its system design and its CBIT fault detection system. These features, when viewed in combination, led the agency to find that EG&G's proposal exceeded the requirements of the RFP and was the most advantageous; the source selection official specifically concluded that these advantages merited paying the additional cost associated with the EG&G system. As this conclusion is consistent with the RFP's emphasis on technical considerations, there is no basis for finding that it is unreasonable. See Engineered Air Sys., Inc., B-254032.2, Nov. 23, 1993, 93-2 CPD ¶ ____.

The protest is denied in part and dismissed in part.

Robert P. Murphy

for Robert P. Murphy
Acting General Counsel